

P. O. Box 2508  
Cincinnati, OH 45201  
Attn: TE/GE:EO:Review:

Date: FEB 19 2002

Employer Identification Number:

Case Number:

Person to Contact:

Telephone Number:

Fax Number:

CERTIFIED MAIL

Dear Applicant:

This letter responds to your application for recognition of exemption as an organization described in section 501(c)(3) of the Internal Revenue Code

FACTS:

You were incorporated pursuant to the corporate statutes of [REDACTED]. Your articles indicate that you will operate exclusively for the promotion of nonprofitable, charitable, and educational purposes, and further states that you intend to engage in various real estate activities for the benefit of low and moderate income households. Your incorporator is [REDACTED].

In response to Part II, Question 1 of your application for recognition of exemption, you submitted a description of proposed activities which states your primary activity will be to provide down payment assistance in the form of "[REDACTED]" to eligible cash-challenged home buyers due to inability to produce sufficient funds needed for the down payment and/or closing costs. Later in this statement of proposed activities you describe your proposed down payment assistance program with the following statements:

"In compliance with [REDACTED], [REDACTED], and [REDACTED] underwriting guidelines, the [REDACTED] ([REDACTED]) [REDACTED] will provide individual assistance equal to [REDACTED] percent (8) of the final sale price of the home to eligible buyers qualifying for such mortgage loan programs."

"The charitable gift funds are to be applied toward the downpayment and/or toward the payment of closing costs."



"There are no 'strings' attached to the gift, other than the requirement that it be used for the purchase of the house that has been approved by the mortgage brokers."

"Consistent with [REDACTED], [REDACTED], and [REDACTED] regulatory requirements, [REDACTED] will be available to any home buyer that qualifies for an eligible (down program assistance "allowed") mortgage loan product."

Also in your statement of proposed activities, you state the criteria that a homebuyer must meet to qualify for down payment assistance from you to be as follows:

1. The buyer must meet eligibility requirements for a [REDACTED] mortgage;
2. The buyer's income must be at or below [REDACTED] percent ([REDACTED]%) of [REDACTED], as established by [REDACTED];
3. The seller must have agreed to pay [REDACTED] a fee of up to [REDACTED] of the final sale price for [REDACTED] services, including home buyer identification, prequalification (sic) of the buyer, provision of home inspection services and cost to administer the [REDACTED] ([REDACTED]) program. This fee is payable only if the buyer closes the purchase of the house;
4. The gift which [REDACTED] will make to a qualified buyer...will come from funds [REDACTED] will have received from grants, charitable contributions and fees for services received from other home sellers. The fees paid by a seller for the sale of a particular house will not be used to pay the downpayment (sic) assistance provided to the buyer of that house.

Another part of your proposed activities that will require the cooperation, other than buyers and sellers, of a number of parties including realtors, lenders, closing/escrow companies, and other related services. You have indicated that your primary marketing focus would be aimed at educating professionals within the real estate industry (i.e., realtors, lenders, builders, etc.) becoming familiar with [REDACTED] program and converting its benefits to both them and their clients, would in turn promote [REDACTED] program to their eligible buyer/borrower clients.



Finally, your statement of proposed activities includes a discussion of how your down payment assistance program lessens a burden of government. You state "Chapter One of the National Home Ownership Strategy states that 'Because homebuilding and homeownership contribute to national prosperity, the expansion of homeownership in this Nation has been supported for many years by public-private partnerships. From the Homestead Act of 1862 to the GI Bill of Rights in 1944, key Federal Government innovations such as the Federal Housing Administration, Department of Veterans Affairs home loan guarantee program, Department of Agriculture's Rural Housing and Community Development Service, Federal Home Loan Bank System, Fannie Mae, Ginnie Mae, Freddie Mac, and others have mobilized private capital to enable the average working family to buy a home with little or no down payment'. By using its own funds to provide downpayment (sic) assistance, [REDACTED] will lessen the burden of federal, state, and local government agencies by helping such agencies remove barriers to affordable mortgage financing, thereby increasing the availability of affordable housing and homeownership opportunities among those who otherwise could not qualify for it due to their inability to produce the sufficient funds needed for their own down payment and/or closing costs."

In another attachment to your original application, you list [REDACTED], [REDACTED], and [REDACTED] as members of your Board of Trustees. Your statement indicates that trustees will receive no compensation for serving on the board. They will receive reimbursements for out of pocket actual costs such as travel, phone calls, supplies, copies, etc. evidenced by receipts. You state, however, that the budget included hiring a full time administrator at \$[REDACTED] per annum and a secretary at \$[REDACTED].

Your application was accompanied by proposed budgets for a partial year of operations in [REDACTED] and for the years [REDACTED] and [REDACTED]. For the partial year [REDACTED], your budget reflects revenues from service fees in the amount of \$[REDACTED], officers' compensation of \$0 and Other Salaries and Wages of \$[REDACTED]. For the year 2001, you project income from service fees of \$[REDACTED], compensation of officers in the amount of \$[REDACTED] and Other Salaries and wages of \$0. For the year [REDACTED], your project receipts from service fees of \$[REDACTED], compensation of Officers in the amount of \$[REDACTED] and Other Salaries and Wages of \$[REDACTED].

Based upon your proposed sources of support, you claim status as an organization described in Section 509(a)(2) of the Code.



[REDACTED]

- In your letter dated [REDACTED], you indicated that Revenue Procedure 96-32, section 4.02(9), *Facts and Circumstances Test for Relieving the Poor and Distressed*, appears to compliment and encompass the defined activities of AAC. You provided the following statements:

"According to [REDACTED], the major obstacle to homeownership in America is **money for a down payment and closing costs.**"

"By reducing down payment requirements to as low as 0%, and allowing the funds for down payments and other closing costs to come through sources other than personal funds - including "[REDACTED]" from charity and/or nonprofit organizations - these affordable mortgage loan programs are designed to provide homeownership opportunities for families that could not otherwise afford to purchase safe and decent housing."

"[REDACTED] assists families who qualify for affordable mortgage loan programs but lack the personal funds required for their down payment and/or closing costs. AAC participates with affordable mortgage loan homeownership programs by complying their underwriting guidelines to provide otherwise qualified families with "[REDACTED]" to be used for their down payment and/or closing costs, as an alternative to personal funds."

**ISSUE:**

Does the organization qualify for exemption as an organization described in section 501(c)(3) of the Internal Revenue Code?

**LAW:**

Section 501(a) of the Internal Revenue Code of 1986 provides for the exemption from federal income tax for organizations described in Section 501(c)(3). Such organizations are recognized as exempt if they are organized and operated exclusively for religious, charitable, and educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.



Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the Regulations defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes the lessening of the burdens of government.

Section 1.501(c)(3)-1(e) of the Regulations provides that an organization may meet the requirements of section 501(c)(3) if it operates a trade or business that is in furtherance of its exempt purposes but not if it is operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513 of the Code.

Section 513 of the Code defines unrelated trade or business as any trade or business the conduct of which is not substantially related, aside from the need of income or funds or the use it makes of the profits derived from such business, to the exercise or performance of an organization's purpose or function which constitutes the basis for its exemption under section 501.

Section 509(a)(2) of the Code defines a private foundation as any organization described in section 501(c)(3), other than one which normally receives more than one-third of its support in each taxable year from any combination of gifts, grants, contributions, or membership fees, and gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in an activity which is not an unrelated trade or business, and not normally more than one-third of its support from a combination of gross investment income and the excess of the amount of the unrelated business taxable income over the amount of tax imposed by section 511 of the Code.



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Revenue Ruling 70-585, 1970-2 C.B. 115 provides advice whether nonprofit organizations created to provide housing for low or moderate income families under federal and State programs qualify for exemption from federal income tax as charitable organizations described in section 501(c)(3) of the Code. In situation 1 in that ruling, an organization was held to be exempt under section 501(c)(3) where it limited its housing activities to low-income families. The organization in that situation obtained operating funds from federal loans and contributions from the general public, and used volunteer help for some of its housing activities. Conversely, in situation 4 of that ruling, an organization operated to assist families with moderate income erect and occupy affordable homes did not qualify since its activities were not designed to provide relief to the poor or to carry out any other charitable purpose within the meaning of section 501(c)(3). The organization in situation 4 was financed by federal and State programs and contributions from the general public.

Revenue Ruling 85-2, 1985-1 C.B. 178 considered whether an organization providing legal advice and training to volunteer guardians *ad litem* for abused children qualified under section 501(c)(3) of the Code. The ruling states that a determination whether an organization is lessening the burdens of government requires consideration of whether the organization's activities are activities that a governmental unit considers to be its burden, and whether such activities actually lessen such governmental burden. To determine whether an activity is a burden of government requires an objective manifestation by the government it considers such activity its burden. The fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government. The interrelationship between the organization and the government may provide evidence that the government considers the organization's activities to be its burden.

Revenue Ruling 61-170, 1961-1 C.B. 112, holds that an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.



Revenue Ruling 76-206, 1976-1 C.B. 154 described an organization formed for the purpose of promoting the broadcasting of classical music in a particular community. The organization accomplished its purpose by engaging in a variety of activities designed to stimulate public interest in the classical music programs of a for-profit station. These activities included soliciting sponsors, soliciting subscriptions to the station's program guide, and distributing pamphlets and bumper stickers encouraging people to listen to the station. The organization's board of directors represented the community at large and did not include any representatives of the for-profit radio station. The ruling concluded that the organization's activities enabled the radio station to increase its total revenues and therefore benefited the for-profit radio station in more than an incidental way. Therefore, the organization was serving a private rather than a public interest and did not qualify for exemption.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In United States v. Wells Fargo Bank, 495 U.S. 351, 108 S. Ct. 1179, 99 L. Ed. 2d 368 (1990) the Supreme Court held that an organization must prove unambiguously that it qualifies for a tax exemption.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In Old Dominion Box Co. v. United States, 477 F.2d 344 (4th Cir. 1973) cert. denied 413 U.S. 910 (1973), the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.



In Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037, the organization's sole purpose was to assist religious, educational and/or other nonprofit organizations in the application of Christian stewardship principles. In furtherance of these purposes, the organization was engaged in financial counseling by providing a financial planning service to wealthy individuals whose net worth exceeded one-half million dollars. These financial planning services were also performed for the directors and major officers of the Christian organizations. The organization prepared a financial plan for a contributor that took into account his personal goals and the applicable tax savings. The financial plan was developed to permit increased current or deferred donations by rearranging the inter vivos or testamentary disposition of the individuals' assets to family members. The rearrangement also resulted in a reduction of Federal income and estate taxes.

The Court concluded that the organization failed the operational test because the financial advice to contributors was a nonexempt purpose that was greater than the exempt purpose:

"The activity of the organization consists of advice on income and estate tax planning to reduce the individual's liability for taxes to a minimum. Regardless of how this advice is characterized, it is advice, which assists wealthy individuals in reducing their tax burden. This is the primary effect of the advice given. This serves the private interests of individuals rather than a broad public interest."

Similarly, the Court concluded in American Campaign Academy v. Commissioner, 92 T.C. 1053, that the petitioner was operated for the benefit of private interests and consequently, not entitled to exemption. The organization was incorporated by the General Counsel of the National Republican Congressional Committee. Funding for the school's activities had been provided exclusively by the National Republican Congressional Trust, an organization that collected political contributions approved by the Federal Election Commission.

As its primary activity: the organization operated a school to train individuals for careers as political campaign professionals. A campaign professional worked for a candidate and typically occupied such strategic campaign positions as communications director, finance director, or campaign manager. To the "best" that the organization



could determine, these graduates served on campaigns of candidates who were predominantly affiliated with the Republican party. No specific example of a graduate working for a Democratic Senatorial or Congressional candidate was offered. The Court concluded that the organization's activities benefited Republican Party entities and candidates more than incidentally.

**ANALYSIS:**

Based upon the above statement of facts and applicable law, we conclude you are not described in section 501(c)(3) of the Code and that you are also not described in either section 509(a)(1) or Section 509(a)(2) of the Code. We reach our conclusion for a number of reasons discussed below:

First, you indicate that an important part of your operation, and your primary source of income, will be the performance of services to persons attempting to market their homes in exchange for a fee comprised of a percentage of the final sales price. There is no information from which it can be concluded that the services you describe will further or advance any charitable purpose. It appears the described services provide a convenience and a benefit to homeowners who are not members of a charitable class of persons. Because services you describe further no exempt purpose, and because they result in benefits to private persons, you do not meet the operational test of section 501(c)(3) of the Code, which requires that you operate exclusively for charitable purposes.

Secondly, you indicate another important part of your operations will be providing financial benefits to persons of low and moderate income families and first-time homebuyers to assist them in acquiring a home. While the providing of assistance to low income, or needy individuals to enable them to acquire housing would otherwise be considered a charitable activity, providing these benefits to moderate income persons and first-time home buyers would not be deemed charitable. You have not explained how benefits you propose to provide to moderate income persons and first-time home buyers furthers a charitable purpose and you have therefore not described activities that are exclusively charitable in compliance with the requirements of section 501(c)(3) of the Code.

Thirdly, although you indicate your activities relieve the burdens of government by increasing home ownership through removing barriers to affordable mortgage financing for families in need of adequate housing, you have not demonstrated that the activities you conduct are of the type that have been assumed by a government agency as its burden. As noted in Revenue Ruling 85-2, *supra*, there must be an objective manifestation that the government considers an activity to be its burden. The mere fact that a governmental agency has a



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policy or program to promote a certain outcome does not mean that the government has assumed the burden of engaging in that activity.

Finally, in addition to not being described in section 501(c)(3) of the Code, we have also determined that you will not qualify as an organization described in either section 509(a)(1) or section 509(a)(2) of the Code. This results from the nature of your income, which will be derived from the performance of services to homeowners seeking to sell their homes. Such services do not further a charitable purpose and are of the type normally engaged in as a trade of business on a for-profit basis. This income would therefore not be deemed qualified support for purposes of section 509. You would therefore be a private foundation if you were described in section 501(c)(3).

CONCLUSION:

It is the position of the Internal Revenue Service, based on the information submitted, that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code, inasmuch, as you are not organized and operated exclusively for any of the specified purposes within that section. You are both organized and operated exclusively for the private benefit of a few individuals.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018. Please note the instructions for signing on the reverse side of the form.

Because you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

If you disagree with this proposed determination, we recommend that you request a hearing with our office of Area Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position, as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may



be held at the office of Area Director of Appeals or, if you request, at a mutually convenient District Office.

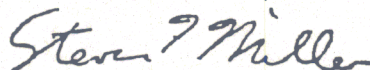
Appeals submitted which do not contain all the documentation required by Publication ~~602~~ will be returned for completion.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination.

Section 7428(b)(2) of the Internal Revenue Code provides in part that "declaratory judgement of decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If you have any questions, please contact the person whose name and telephone number is shown in the heading of this letter.

Sincerely yours,



Steven T. Miller  
Director, Exempt Organization

Enclosures:  
Form 6018  
Publication 892  
Envelope